



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2004

Ms. Kimberley Mickelson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2004-5542

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207405.

The City of Seabrook (the "city") received a request for "any information, signed documents, releases pertaining to [the requestor] during the investigation of the alleged missing camera from the City of Seabrook Parks department." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.303 (submission of public comments).

The submitted information, a completed report, is subject to section 552.022 of the Government Code. *See* Gov't Code § 552.022(a)(1). Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. These documents must therefore be released under section 552.022 unless the information is expressly made confidential under other law. Section 552.103 of the Government Code, which excepts information that relates to reasonably anticipated or pending litigation to which the governmental body is a party, is a discretionary exception under the Public Information Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 591 at 2, n.2 (1991), 473 (1987). However, we note that the report contains information that is confidential under other law, as we will explain.

First, the report contains several social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information made confidential by

law, including information made confidential by statute. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to provision of law, enacted on or after October 1, 1990.

Next, we note the information includes driver's license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers under section 552.130.

Finally, we note that the information includes polygraph examination results. Texas law prohibits the public disclosure of the results of polygraph examinations. Occ. Code § 1703.306. We have marked the information the city must withhold from the requestor based on Occupation Code section 1703.306. *See* Gov't Code § 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 207405

Enc: Submitted documents

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